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9 *Attorneys for Defendant State of California*  
*(by and through the California Highway Patrol)*  
10 *[erroneously sued as "State of California"]*  
*and Michael Bell*

11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT COURT OF CALIFORNIA –CENTRAL DIVISION**

14  
15 **EDGAR SOLIS,**

16 Plaintiff,

17 v.

18 **COUNTY OF RIVERSIDE;**  
19 **STATE OF CALIFORNIA;**  
20 **SALVADOR WALTERMIRE; and**  
**DOES 1-10, inclusive,**

21 Defendants.

Case No. 5:23-cv-00515-HDV-JPR

[*Honorable Hernán D. Vera*]  
Magistrate Judge Jean P. Rosenbluth

**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION IN LIMINE  
NO. 5 TO EXCLUDE OPINIONS OF  
DEFENDANTS' POLICE  
PRACTICES EXPERT GREG  
MEYER**

**Hearing on Motions *in Limine*:**  
October 1, 2024 at 09:00 a.m.  
**Final Pretrial Conference:**  
October 8, 2024 at 10:00 a.m.  
**Jury Trial**  
October 29, 2024 at 09:00 a.m.  
Ctm: 10D

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26 **TO THIS HONORABLE COURT AND ALL PARTIES AND THEIR**  
27 **ATTORNEYS OF RECORD:**

1           **PLEASE TAKE NOTICE** that Defendants, State of California, by the through  
2 the California Highway Patrol, and Officer Michael Bell, hereby file their Opposition  
3 to Plaintiff, Edgar Solis’s Motion in Limine No. 5 to exclude testimony of  
4 Defendants’ police practices expert, Greg Meyer.  
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6                           **MEMORANDUM OF POINTS AND AUTHORITIES**

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8           **I. PRELIMINARY STATEMENT**

9           Plaintiff’s Motion in Limine No. 5 (“MIL 5”) seeks to exclude evidence of 8  
10 opinions of Defendants’ police practices expert, Greg Meyer.

11           As the Court is aware, this litigation arises from an Officer Involved Shooting  
12 during plaintiff’s arrest on 3 felony warrants for carjacking, robbery and drug  
13 possession pursuant to a “Be On the Look Out (“BOLO”) for Plaintiff, Edgar Solis,  
14 who at the time was on parole from a prior felony and who was deemed “armed and  
15 dangerous”.

16           Prior to Defendant Officer Bell’s first contact with plaintiff. Edgar Solis on the  
17 date of the incident, Defendant Bell was aware of Edgar Solis’s criminal conduct by  
18 way of three felony arrest warrants in the “BOLO” for Plaintiff. It is also indisputable  
19 that Plaintiff was prosecuted, convicted, and incarcerated for the felony carjacking  
20 with a firearm warrant listed on the “BOLO” which initiated Defendant Bell’s arrest  
21 of Plaintiff during the underlying incident. After the incident at issue in this case,  
22 Plaintiff was also criminally charged for being a felon in possession of a firearm  
23 *during his arrest by Defendant.*

24                           **ARGUMENT**

25           **I. LEGAL STANDARD**

26           The gatekeeping requirement of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,  
27 509 U.S. 579 (1993) is to ensure the reliability and relevance of expert testimony: “it  
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1 is to make certain that an expert, whether basing testimony upon professional studies  
2 or personal experience, employs in the courtroom the same level of intellectual rigor  
3 that characterizes the practice of an expert in the relevant field.” *Kumho Tire Co., Ltd.*  
4 *v. Carmichael*, 526 U.S. 137, 152 (1999). The Court must assess (1) the expert’s  
5 qualification to present the opinions offered, (2) “whether the reasoning or  
6 methodology underlying the testimony is scientifically valid,” and (3) “whether that  
7 reasoning or methodology properly can be applied to the facts in issue.” *Daubert*, 509  
8 U.S. at 592-93. In analyzing whether an expert’s testimony is admissible, courts  
9 consider whether the expert’s testimony is relevant (helpful to the jury) and reliable.  
10 *Daubert*, 509 U.S. at 589, 591-92. When assessing an expert’s qualifications to  
11 present the opinions offered, courts look to Federal Rules of Evidence, Rules 702 and  
12 703. *Daubert*, 509 U.S. at 592 explained the application of Rule 702:

13 A witness who is qualified as an expert by knowledge, skill, experience,  
14 training, or education may testify in the form of an opinion or otherwise if:  
15 (a) the expert’s scientific, technical, or other specialized knowledge will  
16 help the trier of fact to understand the evidence or to determine a fact in  
17 issue; (b) the testimony is based on sufficient facts or data; (c) the testimony  
18 is the product of reliable principles and methods; and (d) the expert has  
19 reliably applied the principles and methods to the facts of the case.

20 Rule 703, provides, in relevant part:

21 An expert may base an opinion on facts or data in the case that the expert  
22 has been made aware of or personally observed. If experts in the particular  
23 field would reasonably rely on those kinds of facts or data in forming an  
24 opinion on the subject, they need not be admissible for the opinion to be  
25 admitted.

26 But the trial court’s gatekeeping function is not intended to serve as a  
27 replacement for the adversary system. “Vigorous cross-examination, presentation of  
28 contrary evidence, and careful instruction on the burden of proof are the traditional  
and appropriate means of attacking shaky but admissible evidence.” *Daubert*, 509  
U.S. at 595; *see also Humetrix v. Gemplus*, 268 F.3d 910, 919 (9th Cir. 2001)  
(Plaintiffs’ “recourse is not exclusion of the testimony, but, rather, refutation of it by  
cross-examination and by the testimony of [their] own expert witnesses.”). The “judge

1 is a gatekeeper, not a factfinder”, and the gate cannot be closed to “relevant opinion  
2 offered with sufficient foundation by one qualified to give it.” *Primiano v. Cook*, 598  
3 F.3d 558, 568 (9th Cir. 2010). Thus, plaintiffs cannot exclude an expert’s opinions  
4 just because they disagree with the expert or the expert’s opinions are unfavorable to  
5 their position. *See In re Viagra Products Liability Litigation*, 572 F. Supp. 2d 1071,  
6 1078 (D. Minn. 2008) (“only if the expert’s opinion is so fundamentally unsupported  
7 that it can offer no assistance to the jury must such testimony be excluded.”).

8 **II. MR. MEYER IS AN EXPERIENCED AND WELL QUALIFIED POLICE PROCEDURES**  
9 **EXPERT WITH SPECIALIZED TRAINING IN THE HUMAN FACTORS INVOLVED IN**  
10 **POLICE DEADLY FORCE INCIDENTS**

11 Plaintiffs argue that because Mr. Meyer is not a “human factors” expert he  
12 cannot offer opinions in this case regarding the physiological and cognitive limitations  
13 to an officer’s performance during a deadly force encounter. As is obvious from Mr.  
14 Meyer’ deposition testimony and his Rule 26 Report including his Curriculum Vitae,  
15 Mr. Meyer is a qualified and experienced police procedures expert who is a certified  
16 force analyst. Declaration of Deputy Attorney General David Klehm (Klehm Decl.), ¶  
17 2, Exs. “A” (pgs. 62-63), and “B” Rule 26 Report including his Curriculum Vitae.

18 It is an abuse of discretion to exclude an expert’s testimony simply because he  
19 may not be the “best” qualified person; the degree of expertise or knowledge goes to  
20 the weight of the testimony, not its admissibility. *Kennedy v. Collagen Corp.*, 161  
21 F.3d 1226, 1231 (9th Cir. 1998) (“Disputes as to the strength of [an expert’s]  
22 credentials, faults in his use of [a particular] methodology, or lack of textual authority  
23 for his opinion, go to the weight, not the admissibility ...”), quoting *McCulloch v. H.B.*  
24 *Fuller Co.*, 61 F.3d 1038, 1044 (2nd Cir. 1995). It is not required that experts be  
25 “blue ribbon practitioners’ with optimal qualifications.” *Primiano*, 598 F.3d at 563. A  
26 professional degree in the subject matter is not required. *See, e.g., Carnegie Mellon*  
27 *Univ. v. Marell Tech. Group, Ltd.*, 807 F.3d 1283, 1302-1303 (Fed Cir. 2015) (Ph.D.  
28 and academic appointment not required for witness to qualify as expert); *Asplundh*

1 *Mfg. Div., a Div. of Asplundh Tree Expert Co. v. Benton Harboer Engineering*, 57  
2 F.3d 1190, 1213 (3rd Cir. 1995) (expert qualification is not an issue “of possessing a  
3 sheepskin”). Mr. Meyer has specialized knowledge and training in the area of  
4 perception response time of police officers. Other experts may have more education,  
5 training, and experience in this area than Mr. Meyer, but that fact does not warrant  
6 exclusion of his testimony.

7 ***Meyer’s Opinion On Topic 1- Plaintiff’s Positive Toxicology Tests for***  
8 ***Methamphetamine and PCP and the Expended Casing In Plaintiff’s Revolver***

9 These topics are discussed in Defendants’ Oppositions to Plaintiff’s Motions in  
10 Limine Nos. 1 and 2. Mr. Meyer’s opinions about the positive Toxicology results and  
11 the expended shell casing in Plaintiff’s .38 caliber revolver are based on the  
12 investigation conducted by the Riverside County Sheriff Department, parts of which  
13 Plaintiff has also listed on his Exhibit List. Therefore, these documents are official  
14 business records. Consequently, Mr. Meyer’s opinion based on these records is not  
15 speculative. Also, Plaintiff’s counsel will be able to cross-examine Mr. Meyer about  
16 the basis for his opinions incorporating these records so there is little risk of undue  
17 prejudice to plaintiff.

18 ***Meyer’s Opinion on Topic 2-“Had Mr. Solis merely obeyed the law and surrendered***  
19 ***when Officer Bell attempted to detain and arrest him, the shooting incident would***  
20 ***not have occurred.”***

21 This is not a speculative opinion, it is an expert opinion based on Mr. Meyer’s  
22 training and experience and old-fashioned common sense. Plaintiff’s MIL 5 does not  
23 produce any evidence that Defendant Bell would have shot Plaintiff even if Plaintiff  
24 had obeyed the law and surrendered when Officer Bell initially attempted to arrest  
25 Plaintiff on the three felony warrants.

26 ***Meyers’ Opinion on Topic 3 that Plaintiff may have shot at Defendant Bell.***

27 Plaintiff’s MIL 5 does not dispute that Plaintiff’s revolver had one expended  
28

1 shell in the cylinder. Meyer's reasonable inference opinion is based on this fact.

2 ***Meyers' Opinion on Topic 4 that Defendant Bell had an auditory exclusion.***

3 Defendant Bell testified in his deposition that he had an "auditory exclusion"  
4 which prevented him from hearing his own gunshots, and would have also prevented  
5 him from hearing Plaintiff's gunshot, during the incident pursuit. Please see Marcel  
6 Sincich Declaration in Support of Plaintiff's Motions in Limine, Ex. "A" Deposition  
7 of Michael Bell, page 81, lines 3-25. Therefore, Mr. Meyer can reiterate Defendant  
8 Bell's testimony and incorporate it into his opinion.

9 ***Meyers' Opinion on Topic 5 on the effect of Methamphetamine and PCP.***

10 Mr. Meyer testified that his training and experience allowed him to opine on the  
11 general effects of Methamphetamine and PCP which is sufficient for him to express  
12 his expert opinion on the topic. Certainly, Mr. Meyer could not be expected to have  
13 knowledge on how these drugs affected Plaintiff specifically but his general  
14 knowledge of the effects of these drugs would assist the jury's understanding.

15 FURTHER EXAMINATION BY MR. SINCICH:

16 Do you hold yourself out to be a toxicology expert?

17 A-No.

18 Q-Is it fair to say that everybody reacts to being under the influence of either  
19 amphetamine, methamphetamine or PCP differently?

20 A-Well, there are some general ways that they act out based on my own training  
21 and experience but, sure, I mean human beings tend to do everything a little bit  
22 differently, nobody does something identical to you and me.

23  
24 Please see Marcel Sincich Declaration in Support of Plaintiff's Motions in  
25 Limine, Ex. "K" Deposition of Greg Meyer, page 82, lines 9-16.

26 ***Meyers' Opinion on Topics 6 & 7 that Solis was fleeing from a felony that***  
27 ***threatened death or serious bodily injury or was a threat to some unknown***



1 *bystander which was sufficient justification to use deadly force.*

2 Plaintiff was a fleeing felon evading arrest on felony warrants for carjacking  
3 and robbery during the pursuit by Defendant Bell. Additionally, Mr. Meyer testified as  
4 to the basis of his opinion on Topics 6 & 7 as follows:

5 · ·BY MR. SINCICH:

6 · Q · Whose life is imminently threatened in that hypothetical by a person  
7 running away with a gun in their hand?

8 MR. KLEHM:· Objection:· Incomplete hypothetical, vague and ambiguous.

9 ·THE WITNESS:· First and foremost, Officer Bell himself, and secondarily as  
10 the foot pursuit continues and as he is approaching a residence, officers coming  
11 from the other side and any residents inside the house if he managed to get  
12 inside the house, take a hostage, hurt somebody, et cetera. Primarily, at the  
13 outset, certainly Officer Bell from the first time he started chasing him and,  
14 yelling at him, drop the gun or I'll shoot, or whatever the exact words were.

15 · ·BY MR. SINCICH:

16 · · · · Q · By running away with a gun in your hand, how does that constitute  
17 an imminent threat with nothing more to Officer Bell?

18 ·THE WITNESS:· Because a suspect with a semi -- sorry, a suspect with a hand  
19 gun in their hand can point the gun and shoot at the officer in a quarter second  
20 or less, even while they're running and that's proven by empirical research over  
21 and over again, and that's faster than any officer can react to the deadly threat,  
22 therefore, it's an imminent deadly threat presented by the suspect that needs to  
23 be countered immediately.

24 Decl. of Klehm, Ex. "A" Meyer's deposition pgs.,(pgs. 52-54) and pgs. 59-60.

25 *Meyers' Opinion on Topic 8 about Perception /Reaction time.*

26 Mr. Meyer's testified in his deposition that his qualifications as an expert on  
27 Perception and Reaction time included being a certified force analyst by the Force  
28

1 Science Institute for 14 years and also attending a weeklong training seminar on the  
2 topic. Decl. of Klehm, Ex. "A" Meyer's deposition pgs., 62-63.

3 **CONCLUSION**

4 For the foregoing reasons, Defendants respectfully request that this Court deny  
5 Plaintiff's Motion to Limit Testimony of Greg Meyer. If this court is inclined to grant  
6 Plaintiffs' motion, defendant respectfully requests that this court hold a *Daubert*  
7 hearing to evaluate Mr. Meyer's qualifications and opinions in this regard.

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12 DATED: September 23, 2024

Respectfully submitted,

13 ROB BONTA  
14 Attorney General of California  
15 NORMAN MORRISON  
Supervising Deputy Attorney General

16 /s/ David Klehm

17 DAVID KLEHM  
18 Deputy Attorney General  
*Attorneys for Defendants*  
*State of California Michael Bell*